

**GOVERNING REGULATORY DISCRETION: INNOVATION, PERFORMANCE AND
ACCOUNTABILITY IN TWO MODELS OF LABOR INSPECTION WORK***

Roberto Pires

Massachusetts Institute of Technology
Department of Urban Studies and Planning
(rpires@mit.edu)

Abstract:

Why in some cases regulatory inspectors limit themselves to the narrow boundaries of their formal mandate, while in other cases they work collaboratively with other organizations, develop innovative strategies and solve complex problems? This study examines the potential impacts of organizational models for managing performance and discretion at the street-level on the variation of inspection routines, practices, and outcomes. After reviewing traditional and contemporary approaches to the management of discretion in public administration, I present a quasi-experiment that allows for controlled comparisons of two current attempts to reconcile bureaucratic performance with accountability (New Public Management and Experimentalist Governance). A series of case comparisons in Brazil – involving severance payments, fraudulent cooperatives, and safety in construction – provide the empirical evidence supporting the claim that these two management models translate into considerably different work routines as well as inspection outcomes. The different accountability mechanisms (control of inspectors by supervisors) and investigation practices inspired by each management model create different sets of incentives with direct impacts on inspectors’ motivation and on their ability to solve compliance problems (rather than merely meeting productivity targets).

***Prepared for presentation at the Network on Regulating for Decent Work conference:
“Regulating for decent work: Innovative labour regulation in a turbulent world”,
International Labour Organization (ILO), Geneva, July 8-10, 2009.***

* I would like to thank the Department of Labor Inspection (*Secretaria de Inspeção do Trabalho*) at the Brazilian Ministry of Labor for the cooperation and feedback in various stages of this research. Special thanks to Judith Tandler for her continuous support, feedback, and guidance. I would also like to thank Matthew Amengual, Salo Coslovsky, John Paul Ferguson, Michael Piore, Seth Pipkin, Charles Sabel, Ben Ross Schneider, and Susan Silbey for the valuable comments and suggestions.

Introduction

Regulatory inspection work in areas as diverse as labor, environment, food and drugs, among others, has been mostly depicted in the last few decades as legalistic and bureaucratic in which inspectors, apparently arrested in the “iron cage,” cannot do much more than “go by the book” (Bardach and Kagan, 1982). However, in parallel to this standard perception, a number of studies (Silbey, Huising, and Coslovsky, 2008; Piore and Schrank, 2008; and Pires, 2008 are some examples) have also documented instances in which inspectors realized relational interdependence and used a systemic perspective of their limited actions to produce technological, legal, and managerial solutions to the obstacles preventing firms to comply with the law. Why in some cases do regulatory inspectors stay within the narrow boundaries of their formal mandate limiting themselves to the strict implementation of the law as written on the books, while in other cases they refuse to do so and adopt innovative strategies, working collaboratively with other organizations (including the subjects of regulation) to solve complex problems?

The recognition of such variation in the degree law enforcement agents observe relational interdependence (potential for collaboration within and across organizations) raises two larger questions: what are the factors triggering the systemic perception of social action? And how (if at all) does this perception affects regulatory enforcement outcomes? There are many hypotheses and potential lines of inquiry to address these questions, such as the investigation of legal traditions, type/quality of laws and rules, legal consciousness, regulatory cultures, characteristics of regulated entities, or regulators’ previous experiences, among others. In turn, this article seeks to contribute to this ongoing debate by exploring one specific set of intervening variables of great policy relevance: organizational models for managing discretion and performance of regulatory inspectors at the street-level. I argue

that, under certain conditions, structures and strategies for managing discretion and performance trigger (creating opportunities and incentives for) the perception and incorporation in work routines of relational interdependence within and across organizations.

In what follows, I first review the “fear of discretion” that has characterized the debates in legal studies and political science since the mid-20th century. I briefly describe how two contemporary models in public administration – namely, New Public Management and the Experimentalist Governance approach – differ from traditional responses (administrative law and oversight) in terms of dealing with the “problem of discretion.” I compare these two models with a focus on the strategies they offer to reconcile organizational performance and capacity with accountability and controls on the misuses of discretion. After contrasting these models against each other in theory, I present a quasi-experiment¹: the comparison between these two models under the same organizational setting – the Brazilian Department of Labor Inspection – based on data collected through extensive fieldwork in Brazil. The comparisons have two major goals: a) understanding how these models shape inspection work and what are their impacts on the work routine and practices adopted by labor inspectors on the ground; and b) assessing potential differences in terms of the impacts of these models on the outcomes of regulatory inspection. Finally, I outline some of the most salient aspects of these comparisons and draw some conclusions about the relationships between forms of accountability and staff motivation, and between collaborations (“conversations” and deliberative administration), problem-solving, and responsiveness.

The fear of discretion and contemporary responses in public administration

The discretion enjoyed by bureaucratic agents in daily decision-making processes has received insufficient attention in the social sciences (Davis, 1969; Hawkins, 1992)², as the weberian view of bureaucracy as a system of impersonal and dispassionate rule-oriented behavior prevailed as the hegemonic framework of analysis³. Research in different fields – such as socio-legal studies (Wilson, 1968; Bittner, 1967, 1990; Brown, 1981; Van Maanen, 1973, 1978) and policy studies (Leonard, 1977; Lipsky, 1980; Silbey and Bittner, 1982; Wilson, 1989; Maynard-Moody and Musheno, 2003) – has empirically proved discretion as inevitable, indispensable and all pervasive in legal and administrative systems. However, the debates over the topic have traditionally been characterized by the fear of “tyranny” and the risks associated with unchecked decision-making, rather than by the potential benefits associated with the use of discretion by bureaucrats.

Scholars in the liberal legalism tradition interpreted discretion as a threat to the rule of law, a breach of the “social contract”, creating space for arbitrariness and inconsistency, and consequently, the potential for injustice. According to them, discretion needs to be confined, structured and checked by administrative law – procedures and rules regulating the conduct and practices of administrative agents (Davis, 1969; Handler, 1986; Bryner, 1987; Hawkins, 1992). For political scientists, in turn, discretion posed a challenge to the idea of political accountability (between bureaucrats and elected officials), and called into question the liberal structure of constitutional separation of powers (checks and balances). Therefore, much attention has been devoted to limit bureaucratic discretion by instituting procedural mechanisms and oversight on agency performance by congress, the president, and civil society (Calvert et al., 1989; McCubbins et al., 1987; McCubbins & Schwartz, 1984).

Retrospective evaluations have demonstrated that legal procedures and oversight have successfully managed to reduce levels of discretion. However, they also showed that the remedy has been as bad as (if not worse than) the disease. Bryner (1987) documented how excessive and misdirected actions to reduce discretion have damaged the capability of public sector organizations to accomplish delegated tasks, by making administrative processes more confusing and reducing the ability of bureaucracies to function effectively. As a result, too much attention on procedures has led to insufficient attention to aiding organizations make the complex decisions necessary for the implementation of policies and regulation.

As the efforts to limit discretion at the expense of organizational capacity have proved historically to be an undesirable way to deal with the problem, in the last decades, two bodies of literature in public administration have attempted to balance the control of bureaucrats' discretionary decision-making with a concern for bureaucratic competence. Differently than the efforts of the earlier period (described above), these two responses emphasized organizational structure and managerial practices rather than rules and legal procedures (administrative law and oversight) as more effective means for managing discretion⁴.

The first response, which is by now well-known as the New Public Management (NPM) paradigm, became one of the mantras of public sector reform throughout the world in the 1980s and 1990s. Against the breakdown of bureaucratic capacity in the previous decades and widespread discontent with government performance, NPM brought the hopes of improving bureaucracies' efficiency and responsiveness to political principals and citizens, with its orientation towards outcomes and optimization of the public budget. The literature on the topic identifies three main characteristics of public sector reforms

categorized under the rubric of NPM: a) decentralization, with the disaggregation of subnational government actors, splitting up of large hierarchical structures, and separation of core vs. other functions of government; b) privatization and competition, with the deregulation, creation of quasi-markets for most public services, and public-private partnerships (PPP); and c) performance management, with the institution of targets and output indicators to measure the performance of organizations and their bureaucrats, and a strong emphasis on pecuniary-based, specific performance incentives such as pay-for-performance schemes (Osborne and Gaebler, 1992; Dunleavy and Hood, 1994; Pollit, 1995; Bresser-Pereira and Spink, 1999; Barzelay 2001).

The NPM solution to the problem of discretion (mostly related to the third characteristic above) sought to avoid the mistakes of the past by emphasizing the measurement of outputs rather than control of means via legal and administrative procedures. Under this model, public sector organizations should define a short list of performance targets that can be narrowly defined, quantified, and measured. Each and every bureaucrat is assigned a piece of the overall target. Supervisors constantly monitor bureaucrats in terms of their performance in meeting these targets, in reference to quantitative output indicators. In order to provide the right incentives, managers administer bonuses (pay for performance schemes) on the salaries of only those workers who meet the target periodically. Thus, the NPM solution restricts bureaucrats' discretion by providing strong incentives (significant increase in salaries) only for the desired actions/outcomes without severely limiting the capacity of bureaucrats to pursue policy goals (i.e. less paperwork, greater latitude in ways to deal with problems, etc).

The second response, the Experimentalist Governance (EG) approach, emerges as a criticism by EG scholars (C.Sabel, J.Zeitlin, M.Dorf, and W.Simon, among others) of the

untenability of the principal-agent framework at the heart of NPM proposals. Drawing from institutional economics, NPM models in general separate conception from execution and assume the existence of principals (be they civil society actors, political parties, elected officials, etc.) who already know what needs to be done to solve collective problems. Supposedly, these principals are ready to translate public goals into detailed performance targets – e.g. a 50% increase in the formalization of labor, a 20% decrease in the school drop-out rates, etc. In contrast, EG scholars argue that there are no such principals in the polity with the robust and panoramic knowledge needed for this directive role. Therefore, the main problem for reform is not to determine performance targets and the right incentive system, but to determine ways actors can interact, discover, and learn together what needs to be done, and how to do it (Sabel, 2004; 2005).

Thus, the solution requires experimentalist organizations “that assume the provisionality of their goals and institutionalize social learning by routinely questioning the suitability of their current ends and means, and by periodically revising their structures in light of the answers” (Sabel, 2004: 4). Experimentalist organizations display the attitude of constantly detecting and correcting errors at the lowest levels, and then adjusting the higher level structures to generalize successes and encourage more refined error detection. By doing this, EG scholars argue that public sector organizations can, at the same time: a) expand their capacities to solve complex problems by adapting to rapidly changing conditions and by tailoring their responses to diverse clienteles; b) without jeopardizing rule-of-law values or even heightening forms of accountability of the front-line bureaucrats to their supervisors and the larger public. As the example of state child protective service systems reform in the United States indicates:

“The reforms do not achieve accountability by constraining frontline decisions through rules. Rather, frontline discretion is increased, but joined to the requirement that, in the course of establishing and adjusting plans for children, frontline workers and the professionals and stakeholders with whom they collaborate explain the choices they make in terms of the governing values of the program. Review of these explanations in turn allows administrative superiors and outside oversight bodies to detect and begin considering how to correct misjudgments by individual case workers, systemic flaws in operating routines at the local office or program level, and even ambiguity or mistake in the agency’s own conception of its key commitments and plans for achieving them. Thus, the agency learns to improve while monitoring what it does, and the same process that makes customization of services effective makes it accountable as well. We call such learning-by-monitoring institutions “experimentalist”. (Noonam, Sabel, and Simon, 2007: 3)

Recent developments in experimentalist institutions have been documented in different countries and areas of public service.⁵ In all these cases, analysts attributed the successful outcomes observed to the greater autonomy of front-line bureaucrats to adapt policy/project goals during their implementation in each specific situation, and to the establishment of mechanisms for continuous error detection and correction based on arguments and reports from the front-line (usually peer review, benchmarking, etc.), culminating in periodic revisions of framework goals and procedures.

In sum, the two models just reviewed offer two different solutions to put a check on the relative autonomy of front-line workers. The NPM solution to managing bureaucrats’ discretion emphasizes narrowing programs and holding bureaucrats accountable to the attainment of specific and quantifiable performance targets. In turn, the EG solution suggests a process through which bureaucrats are constantly required to give reasons (peer and/or public review procedures) for the use of their discretion in the solution of problems.

The debate on these models is ongoing and the volume of studies on each of them alone keeps increasing. However, efforts to compare these two models (NPM vs. EG) side by side and their implications for governance and the management of regulatory bureaucracies remain scarce. This article seeks to fill in this gap by attempting to improve our understanding of: a) how these two models take shape on the ground (procedures,

routines, and social practices) and how similarly or differently they organize the work of regulatory inspectors; b) the impacts of each approach on inspection outcomes; and, finally, c) what are the strengths and weaknesses of different solutions to the problem of managing discretion?

Two distinct models for managing regulatory discretion under the same organizational setting: research design and methods

In order to address the issues above, this research deploys of a quasi-experimental research design⁶. It focuses on one regulatory agency in one country: the Department of Labor Inspection (DLI), under the Brazilian Ministry of Labor. The agency's mission is to assess compliance with and enforce the national labor regulation, including both wage and hour laws and health and safety norms. The authority to enforce labor regulation is established at the federal level but its implementation takes place through a decentralized system, through which approximately 3,000 labor inspectors are distributed across 27 state-level offices. These inspectors are supposed to cover more than 78 million employed workers (both formal and informal) and 2.7 million registered firms in all 5,564 Brazilian municipalities. Even though the agency is under-staffed and under-resourced given the magnitude of the task⁷, the career of labor inspectors has been subjected to significant reforms since the country's re-democratization in 1985, leading to higher organizational capacity and professionalization – such as the recruitment of inspectors through competitive public service exams and a rewarding career path (one of the best-paid jobs in the federal civil service).

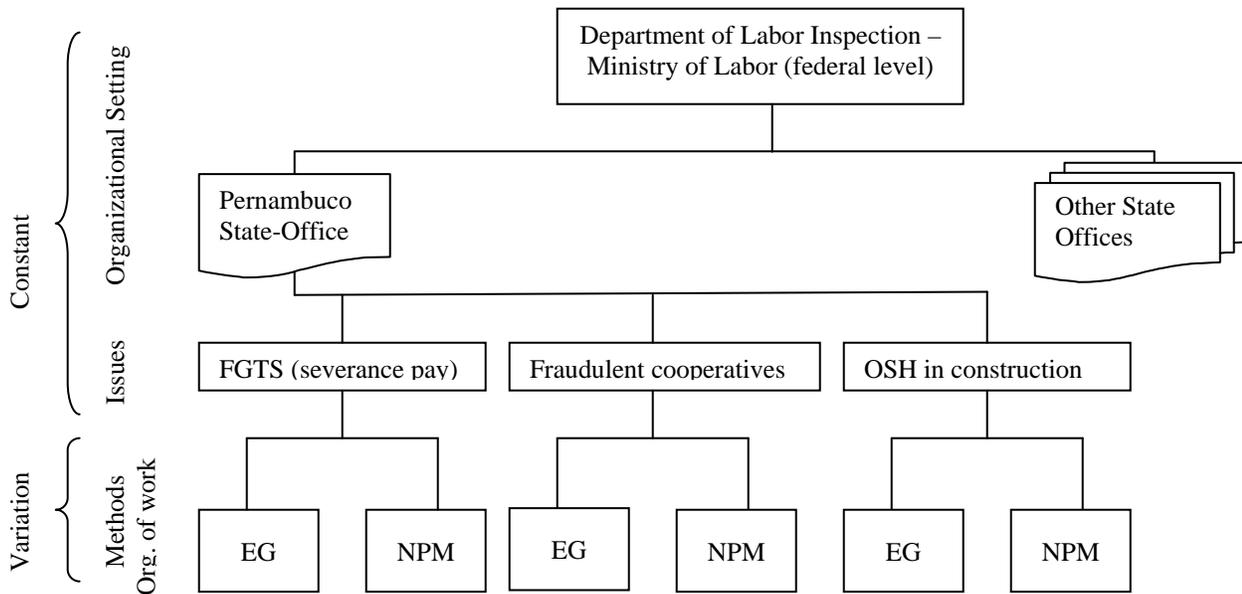
I first started investigating this organization in December 2006, when I conducted fieldwork for approximately 10 months in three Brazilian states (Bahia, Minas Gerais, and

Pernambuco), trying to understand the variation in regulatory practices or styles (coercion or assistance) adopted by labor inspectors at the street-level and the impact of such variation in the outcomes of inspection (Pires, 2008). As I carried out the data collection, observation, and interviews⁸, I began to realize that there were two different systems operating simultaneously in the last decade through which management (at the central level) supervised/monitored the work of the inspectors at the street-level. The first one follows closely the dictates of NPM models and is based on individual and territorially circumscribed inspections monitored on the basis of individual performance targets (e.g. number of workers formally registered) and a pay-for-performance system (reaching up to a 45% bonus on inspector' salary, being one-third tied to individual performance and two-thirds tied to the collective performance of inspectorate). The second one, which resembles the EG approach, is based on teams of inspectors working on projects organized around themes, sectors or problems (e.g. child labor, illegal subcontracting, or silicosis in the mining sector), monitored on the basis of team progress reports and their ability to address sector-wide problems.

This situation (the coexistence of the two models) offered a unique opportunity to evaluate and compare these two forms of organizing inspection work⁹. As depicted in Figure 1, on the one hand, many important variables are held constant: the same organization and group of professionals (i.e. same career, status, legal mandate, salaries, etc.), enforcing the same regulations in the same country and state (Pernambuco), while dealing with the same specific issues (cases involving both wages and hours and health and safety regulations)¹⁰. On the other hand, under this relatively constant organizational setting, there are two different methods for organizing and supervising the street-level work of inspectors (i.e. different strategies for managing discretion – NPM and EG). Therefore,

the comparisons under this quasi-experiment allow for the “isolation” of the effects of the independent variable “management models” on inspectors’ routines of work and on the outcomes of their actions.

Figure 1 – Research Design and Case Selection



New Public Management vs. Experimentalist Governance: discretion, work routines, and outcomes

This section presents the analysis of three distinct issues dealt with by labor inspection in Pernambuco, as well as in other states in Brazil. For each of the three issues below, I compare across two different methods for managing regulatory discretion: NPM vs. EG. The comparative analysis below aims at: a) determining empirically whether these different models structure different ways of organizing inspection work, (different or similar inspection procedures, practices, routines, and strategies); and b) assessing the

impacts of these similarities and/or differences on the outcomes of labor inspection in Pernambuco.

FGTS Collection

In Brazil, national labor law establishes that formal workers have the right to severance payments¹¹ when dismissed or retired, by accessing a special job security fund: FGTS (*Fundo de Garantia por Tempo de Serviço*). Every month, employers contribute with 8% of worker's wage to this fund, which accumulates while the worker is still employed by the firm (i.e. proportional to the worker's tenure). As an important source of revenue for the federal government,¹² the FGTS was instrumental in the fiscal adjustment of 1990s. The Ministry of Planning put pressure and provided incentives for labor inspectors to focus on the violations of FGTS payments (or under-payment) by firms, in order to raise federal revenues. Therefore, since the mid-1990s, the Department of Labor Inspection (DLI) defined FGTS collection as one of the main priorities for labor inspection in Brazil. However, the effort of collecting these contributions through labor inspection has been organized in two different and coexisting ways in DLI's Pernambuco State Office.

The first strategy took shape soon as FGTS collection became a national priority for labor inspection in the mid-1990s. DLI determined that every individual inspector anywhere in the country had to meet performance targets in terms of collecting such revenue (following the lines of NPM reforms). DLI instructed inspectors to verify conformity with FGTS in every single inspection, even in the cases in which inspection was motivated by other types of labor law violation. The impacts of defining FGTS collection as a priority and establishing performance targets were considerable – the collection of such revenue by inspectors in the entire country increased fourfold from 1996 to 2005 (Table 1).

Table 1: Total FGTS collection by labor inspection in Brazil, 1996-2005

Year	Amount (US\$)	Year	Amount (US\$)
1996	114.202.231,20	2001	368.500.063,09
1997	225.119.264,87	2002	480.284.704,85
1998	275.295.590,83	2003	398.969.690,00
1999	307.418.537,60	2004	414.483.525,00
2000	411.332.339,08	2005	411.443.815,00

Source: MTE/SIT

Inspections in Pernambuco (as well as in other Brazilian states) have been organized since the mid-1990s according to a zoning system. The state-level office assigns pairs of labor inspectors to a geographic jurisdiction (districts within the state) and they are supposed to cover their area by going around and searching for firms violating labor regulation in their districts. In the absence of any special form of planning (diagnosis instruments, investigation processes, etc.), workplace inspections and investigation strategies are random, varying by each pair of inspectors; and the triggering of inspections is mainly responsive to the complaints received from individual workers and unions. In addition to having a FGTS collection target, each individual inspector is also subject to inspecting a minimum number of firms every month. These performance targets create incentives for inspectors to meet their goals by focusing their enforcement efforts on many small firms with small FGTS debts, because these are easier and quicker to process, leaving aside larger firms with potentially larger but more complicated debts. As a result, a large number of inspectors (virtually all) have been investing a lot of their time into one single issue to produce not very efficient results (US\$/per inspection), in relation to an alternative strategy (see Table 2, below).

In 2006, DLI authorized the creation of a pilot project in the Pernambuco State Office: the FGTS Operational Group or GO-FGTS¹³. Four, out of the 145 inspectors in the

State Office, were assigned to the GO-FGTS. As these inspectors formed the group, they were automatically discharged of meeting the performance requirements assigned to ordinary inspectors – DLI classified them as performing “special activity”, thus immune to typical NPM performance measurements. By grouping these inspectors together and by freeing them from predefined quantitative performance targets and inspection procedures, they were no longer bounded to geographic districts, and they had more time and “organizational space” for devising enforcement efforts with a strategic focus on economic activities and larger firms with potentially higher FGTS debts.

The first step taken by the newly created group was to interact with CEF (*Caixa Econômica Federal* - the federal bank that administers FGTS deposits). The group of inspectors requested access to data and information to develop a system capable of pointing out the firms with larger unpaid debts and the sectors with greater propensity to have firms with large debts. As a result, the GO-FGTS identified a short list of 1,000 firms with higher potential for FGTS collection (employing 40% of all formal workers in the state) out of the universe of 62,000 firms in Pernambuco. This made the task more manageable and, according to a member of the operational group, “... we can not only inspect but also monitor compliance in 1,000 firms.” In addition to monitoring, focusing on this target group allows the operational group to tailor strategies for each different sector or firm in order to produce greater impacts.

Before the development of this informational system, it would take up to 8 months for one inspector to audit a firm with approximately 3,000 employees, only to identify the FGTS debts and irregularities. Now it takes only some hours and when they finally do the workplace inspection, inspectors have in hand the numbers and documental evidence indicating the amount of debt. In the course of these inspections, firms can choose to pay

the debt right away, negotiate a payment schedule, or refuse to pay and bear the respective sanctions. In order to increase the coercive power of their operations, the group of inspectors reached out and partnered with the federal treasury attorneys, who can bring lawsuits resulting in heavy fines against debtors of the national treasury.

Finally, in contrast to the random strategies employed by the pairs of inspectors in the zoning system, the operational group developed a standardized procedure for inspection, as a result of continuous conversations among its members and partners about practices and strategies for inspection (the groups has periodic meetings to constantly discuss results and revise practices). Standardization has positive impacts for firms: it creates predictability and a feeling of justice (all firms are subject to the same procedure). It also favors inspectors when firms appeal cases in courts (coherence of inspection work).

The experience of the GO-FGTS goes beyond the strategic targeting of large firms. It reveals that continued interactions with relevant partners, leading to the use of better diagnostic information and a customized approach for each economic sector, produces enforcement efforts with greater impact. When compared to the outcomes of the zoning system (Table 2), the GO-FGTS, which gathers only 3% (4) of the inspectors in the State Office, collected 65% of the total FGTS collected by all inspectors in Pernambuco - it doubled the State Office FGTS collection from 2005 to 2006, when the group was created. In 2007, the Pernambuco GO-FGTS collected the highest absolute amount of FGTS (higher than in the most industrialized states) and benefited the largest number of workers among Brazil's State Offices. As the members of the group were freed from meeting predefined performance targets and had more latitude to develop more complex actions by collaborating with other government agencies, they were able to be more productive using minimum internal resources.

Table 2: Comparing the outcomes of FGTS by labor inspectors in the Pernambuco State Office, 2007

	Number of inspectors	Inspected firms	Total FGTS collected and notified by inspection (US\$)	% of firms inspected	% of total FGTS collected	Avg. FGTS collected per firm (US\$)	Avg. FGTS collected per inspector (US\$)
<i>Zoning System (individual performance targets)</i>	141	12,959	12,583,883.16	98.57%	34.81%	971.05	89,247.40
<i>GO-FGTS</i>	4	188	23,568,255.16	1.43%	65.19%	125,363.05	5,892,063.79
Total Pernambuco	145	13,147	36,152,137.96	100%	100%	2,749.84	249,325.09
Total Brazil	3,174	285,462	566,486,244.08	--	--	1,984.45	178,477.08

Source: MTE/SIT and SRTE-PE.

Fraudulent Cooperatives and illegal subcontracting

Cooperatives of workers or producers have existed in Brazil since 1891, but only received legal support in the 1970s, and it was the 1988 Constitution that further consolidated and stimulated this arrangement for autonomous work and production. However, in 1994, changes introduced in a paragraph of the labor law created ambiguity and allowed for the dissemination of cooperatives as a low-cost method for firms outsourcing labor-costly activities (e.g. from cleaning, maintenance services and administrative staff to doctors and nurses in hospitals). Since then and in the context of worldwide restructuring of production, firms have been systematically ending employment relationships and re-contracting the same workers through “cooperatives”. For firms, outsourcing to cooperatives represented a way to bypass labor regulations, avoiding labor costs and the payment of employees’ benefits. For workers, these “cooperatives” implied the loss of all employment rights and benefits.

For these reasons, current judicial interpretations of labor law in Brazil disallow the use of cooperatives for the outsourcing of “end-activities” (e.g. software designer in a software development firm) and for the mere intermediation of labor (e.g. cooperatives that produce nothing but the labor force of its members). As a result, the dissemination of fraudulent cooperatives has been an object of intervention by labor inspection in Brazil. And, similarly to the previous case (FGTS), inspectors have been dealing with the problem of fraudulent cooperatives simultaneously with two different approaches in the Pernambuco State Office.

The first of them is also based on the organization of inspection work in pairs of inspectors according to a geographic zoning system. Following the same lines of FGTS inspection (above), inspectors are expected to meet performance goals of formalization of employment relationships (formalization is also one of the top priorities set by central management at DLI in Brasilia). As firms have been resorting to outsourcing from cooperatives, several inspectors in the State Office started to notice the frequency with which workers who previously had formal and direct jobs were being pushed into these service provision cooperatives, thus reducing or not contributing to the increase of the formalization rate.

However, these fraudulent cooperatives are not easy to deal with under the quick and mechanized inspections expected by the performance measurement system (predefined goals and procedures). Thus, once they spot such frauds, pairs of inspectors have dealt with them with non-uniform understandings and inspection procedures, resulting in sanctions (notifications and fines) easily overruled when appealed by firms. In addition to the growing number of complaints arriving from workers and unions on the spread of these fraudulent arrangements, labor prosecutors (MPT – *Ministerio Publico do Trabalho*) have

also been demanding more effectiveness from labor inspectors in dealing with the issue (i.e. developing detailed investigations and producing the evidence necessary for prosecutors to file lawsuits against firms).

In response to these external demands and also to internal pressures from an informal pioneering group of inspectors struggling with the issue of fraudulent cooperatives in the Pernambuco State Office since 2000, state and federal managers authorized the creation of ECOFREM – a group of 7 inspectors dedicated to the investigation of frauds in employment relationships. Recognizing the complexity of the problem and the need for a special approach, federal managers granted “special activity” status for the members of the group, exempting them from the standard performance measures. In order to be effective, the work of the group required a more open-ended process, detailed investigation to produce the documental proofs that characterize the fraudulent employment relationship, affidavits from workers, negotiation with firms, in addition to partnerships with unions, professional associations, and government organizations (including judges and state attorneys). Local (state-level) managers monitor ECOFREM’s performance on the basis of periodic written progress reports justifying the continuation of the project.

Since its creation, ECOFREM has maintained intense dialogues with MPT prosecutors (characterization of frauds and employment relationships) and with labor unions (exchanging specific information about hiring practices in each sector) in order to devise common strategies and procedures for intervention and monitoring¹⁴. As a result of these exchanges, the group started making sector-wide operations for each economic activity. The main goal is to promote change in hiring practices in entire sectors, especially those with firms traditionally engaged in illicit forms of subcontracting.

From 2001 to 2002, ECOFREM launched an operation to tackle fraudulent hiring arrangements in the software industry in Recife (Pernambuco), as they realized that 32% of all complaints filed about “cooperatives” were in the local IT industry. According to the coordinator of the group:

“The union [SINDPD] came after us and the MPT saying they had identified that the sector was growing but formal employment and the wage mass were decreasing. There was something happening. They had heard from some workers about the growth of cooperatives in the sector. We knew by experience that, in previous years, workers were mostly formal in this sector.”

Firms were resorting to cooperatives as a strategy to cut production costs as they were facing fierce competition from IT firms in India. As the investigations evolved, the group realized that nearly all firms in the sector had some kind of arrangement involving subcontracting of software designers, systems engineers, and other professionals, in the form of “cooperatives”. These workers labored everyday in the same office, subordinated to the same boss, all of which characterize employment relationship, according to Brazilian regulations. The inspectors and their partners were aware that the cost of formally hiring all these workers (retroactively) was significantly high for the mostly small and medium-sized firms facing international competition. In recognition, the group of inspectors held a series of meetings with 35 firms in order to negotiate a compliance schedule that would not harm the rights of workers. Up to 2003, the operation had benefited 2,215 workers previously involved in fraudulent cooperatives.

In another case, ECOFREM developed an operation in the health care sector, from 2002 to 2006. In addition to a significant number of complaints filed by workers, the group of inspectors had already diagnosed an acute problem in the sector, especially in relation to hiring arrangements for doctors, nurses, and other health care professionals. In Recife, hospitals, physiotherapy clinics, and laboratories, have long practiced the misclassification

of workers (as cooperatives). As a result of this “hiring culture” in the sector, the inexistence of employment rights for health care professionals was largely associated with excessive overtime, sleep deprivation due to double night shifts, denial of vacations, and predisposition to drugs usage and mental problems, all influencing the quality of the health care treatment for patients. In a effort to change the traditional hiring practices in this sector, ECOFREM administered workshops for 195 professionals to explain the law and what firms’ managers need to do to comply with the law, inspected 64 health care facilities, and undersigned (along with MPT) 177 consent decrees with firms and unions after several meetings, all leading up to a total of 2,067 formally registered workers (including doctors, nurses, and assistants).

In addition to the results above¹⁵, sector-wide operations also create demonstration effects. Based on information from workers and from the government databases of formal employment contracts (CAGED), inspectors have been noticing that many firms comply with the regulation just because they heard of other firms being inspected and punished. For example, a group of hospitals that had not yet been inspected registered more than 300 doctors, in the months after the operation. In addition to creating an effective procedure for dealing with such a complex problem (fraudulent cooperatives), the members of the group fare better than ordinary inspectors even when measured in terms of standard individual productivity indicators. While, on average (for 2007), each ordinary inspector formalized 15 jobs per month, each ECOFREM member formalized 25 jobs per month.

Safety in Construction: The Pernambuco Tripartite Committee

In general, the construction sector in many countries has always been a major source of employment as well as of occupational accidents, due to inherent risks and poor

health and safety conditions. In Brazil, approximately 5.4 million workers labored in construction and accounted for 13% of all fatal accidents in the country in 2004, according to the International Labor Organization¹⁶. In the mid and late-1990s, the state of Pernambuco experienced a very rapid expansion of the sector (which employed approximately 48,500 workers in 2000), not matched by the adequate improvement of safety conditions. As a result, the state ranked top in number of accidents in the sector in Brazil (26 deaths in 1996, and 15 in 2000), being the main causes of fatal accidents falls and electrical shocks. As in the previous cases, it was possible to observe the evolution of two different strategies for health and safety inspection in the construction sector in Pernambuco.

In the Pernambuco State Office, as well as in other states in Brazil, inspectors in the health and safety area have been planning their enforcement efforts by economic activity since the early-1990s, even before the inspectors specialized in wage and hours' issues began to plan their actions. Therefore, in recognition of the risks inherent to construction, Pernambuco inspectors have dedicated, on average, 30% of all their health and safety inspections to the construction sector. Even though they have been organizing their work with a strategic focus on the most risky economic activities, traditionally, workplace inspections have still been organized on the basis of individuals or pair of inspectors pursuing quantitative targets, such as an X number of inspections in a Y number of firms, resulting in Z fines and covering a W number of workers per month/year.

Under this model and in response to the high number of accidents in construction, Pernambuco inspectors are among those (in the country) who resort more frequently to the strictest sanctions – such as the shutting down of construction sites (interdictions), in addition to fines and notifications. However, as one inspector reported “...we came to

believe, over time, that sanctions alone do not tackle the roots of problems, the risks workers are exposed to.” They noticed in many cases that construction firms would pay the fines without making any change in working conditions in their construction sites.

However, an alternative form of organizing inspection work for the construction sector also emerged in Pernambuco. In 1998, the National Tripartite Committee for Health and Safety Norms (federal level) revised the norm for construction, which allowed (albeit not making it mandatory) the State Offices to create local tripartite committees (LTC). The Pernambuco State Office took the lead in creating a LTC in 1999. The local tripartite committee brought together inspectors, the labor union, the construction firms association, and other government agencies (such as Fundacentro – the national health and safety research institute). These actors sit on the same table regularly twice a month¹⁷. Since its creation, the LTC has become the main channel of interaction between inspectors, labor union, firms association, and other government actors.

In my interviewees with unions and business representatives, all referred to the LTC as a place for exchange of information and productive discussion. As I could observe in some meetings, interactions are conflictive, but the mediation of inspectors leads most times to discussion and agreements between the parties. This is even more impressive, taking into consideration that before the creation of the LTC, relationships between the construction labor union and firms were adversarial and often violent, involving strikes, public accusation, and judicial processes. Before the LTC, all union and firms interactions were limited to the annual negotiation of wages and *ad hoc* negotiations over strikes and other crises. Today they negotiate the details of the implementation of health and safety norms in construction sites. Finally, the members of the committee deliberated that all

issues settled in the LTC automatically become items of the annual collective bargaining agreement of the sector.

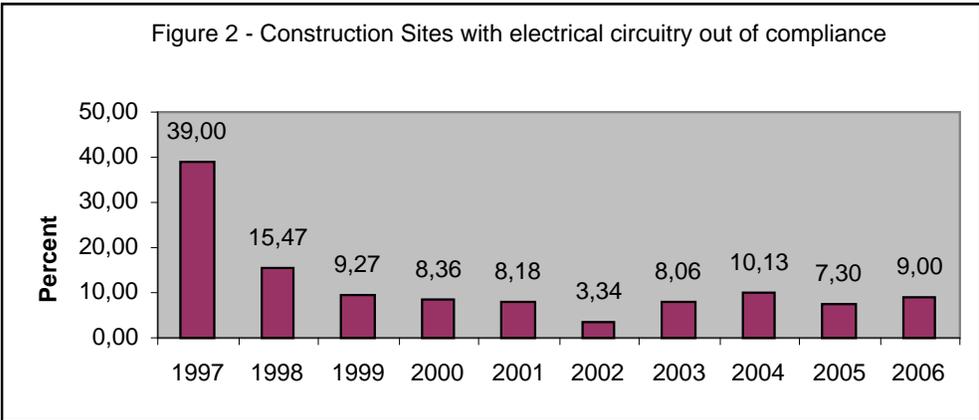
One instance that clearly illustrates the impacts of the LTC (in comparison to ordinary inspections strategies) refers to the measures taken to reduce the number of fatal accidents due to electrocution in construction sites. The issue of deaths caused by electrical shock had been in the minds of labor inspectors for sometime and under discussion in the LTC for a year. But inspectors did not know exactly what to pursue beyond resorting to sanctions against firms. The LTC started to make significant progress on the issue when the Fundacentro representative – who had read in specialized journals about the Japanese experience in reducing fatal electrocutions in construction sites– invited someone he knew from the Brazilian office of Siemens to make a presentation about their safety devices for electrical circuitry. The guest presented a version of the DR (differential residual device), and said his firm was about to release a new line of products that were not only more suitable for construction sites but also cheaper (ranging from US\$20-100, each).

After the technical device became available, the subsequent challenge was to improve the conditions of electrical circuitry in construction sites, because the DR would malfunction (causing energy cuts and delays) if installed in poor quality circuits. Thus, labor inspectors convinced one progressive firm owner to pioneer the adoption of the DR, since no firm owner in Recife knew how to make the device function properly. Together, they took on the challenge, arranged for a training program for electricians with the help of the state federation of industries, and made the necessary adjustments to the infrastructure and routine of construction sites in order to make the DR viable for other firms.

As a result of such an open-ended process (lasting three years from discussion and adaptations to consensus among members of the LTC – regulators, firm association, and

labor union), inspectors had the empirical evidence to convince other firm owners why they should adopt the DR and how to install it¹⁸. In February 2004, LTC deliberated that all new construction projects must install DR devices. A 2006 survey conducted by the construction firms association found that only 0.71% (of a sample of 700 construction sites) did not have DR installed (Sinduscon-PE, 2007). As a result, in 2006, 2007, and 2008, a reduced average of two fatal accidents was reported, with only few accidents occurring in non-compliant firms.

In addition to significantly reducing the risk of death by electric shock, the development of the solution and the consensus achieved in the LTC had considerable impacts, as we can see below, in terms of the improvement of electrical circuitry in construction sites (a pre-requisite for the well functioning of the DR) – compliance rates with all related legal requirements increased sharply from 1997 to 2006. As a consequence of such improvement, construction projects became more energy efficient and firms reduced their energy costs.



Source: Sinduscon-PE

Summing Up

The matrix below summarizes the main patterns running across the comparisons within the three pairs of cases above. Based on the empirical evidence (similarities across different issues in the matrix lines and differences across models in the matrix columns), it is safe to say that the two different methods for organizing inspection work (NPM and EG approaches) translate into significantly different tools through which supervisors control the work of inspectors, as well as different inspection practices, routines, and strategies. The comparisons also suggest a plausible causal association between these practices and the outcomes of inspection work.

Matrix 1 – Cross-case comparisons

<i>Elements of comparison</i>	<i>Methods for organizing inspection work</i>	<i>Issues of inspection (cases)</i>		
		FGTS Collection	Fraudulent Cooperatives	Safety in Construction
Accountability / control by supervisors	NPM	Measurement of predefined outputs – “FGTS collected by inspector”; “number of firms inspected”; “number of labor contracts formalized by inspector”; “number of fines per month”, etc.		
	EG	Assessment of progress reports justifying the continuation of the operation or the revision of goals and procedures (based on quantifiable and non-quantifiable results).		
Inspection practices, routines, and strategies	NPM	Zoning system. Responsive and random inspections of firms in geographic jurisdictions. Non-uniform (inconsistent) procedures for firms in the same sector. No detailed investigations (evidence collection)		
	EG	Continued interactions between inspectors and relevant partners (co-production and revision of strategies, plans, etc.). Use of diagnostic information (databases, partners, etc.). Sector-wide operations (strategic focus on economic activities). Customized inspection procedures by sector (with standardization in each operation).		
Outcomes	NPM	Increased FGTS collection at the expense of mobilizing too many inspectors.	Little impact in changing firms’ hiring practices. Difficulties in investigation.	High number of sanctions with little impacts on reducing risks to workers.
	EG	Efficient and productive FGTS collection, mobilizing minimum resources	Change in hiring practices (underlying reasons for non-compliance). Detailed investigations.	Development of technical and managerial solutions linking health and safety with production

		(optimization).	Demonstration effects.	quality/costs.
--	--	-----------------	------------------------	----------------

It is possible to draw three main conclusions from the crossing of the three different issues by the two different methods, summarized in the matrix above. The first one concerns the different strategies available to supervisors to control the performance of front-line inspectors. As the cases indicate, the different ways through which supervisors monitor the work of inspectors significantly affect their motivation in performing their job. After more than two decades of NPM-inspired public sector reforms, even sympathetic analysts have acknowledged NPM has “middle-aged,” (Hood and Peters, 2004; Dunleavy et al., 2006) as criticism abounds on the paradoxical and dysfunctional effects of predefined quantitative performance measures (Bouckaert and Balk, 1991)¹⁹. My interviews and observations sustain the recognition by inspectors that the introduction of quantitative performance indicators from above (management) interferes to a significant extent in their professional autonomy. The predefinition (at the higher levels) of specific and narrow goals favor mechanistic, bureaucratic check list inspections, since the indicators “tell” inspectors *a priori* what they should consider relevant and what they should not do, constraining other potentially impacting courses of action. Some inspectors have repeatedly reported their frustration in not being able to develop cases more complexly (longer periods, partnerships, etc.), having to move on before achieving relevant changes in business practices.

In contrast, inspectors working on teams or special groups emphasized their ability to develop a more contextual (and sector-specific) understanding of violations and legal norms. As one inspector stated “inspection activities become less about law enforcement and more about how to stimulate employers and workers to continually improve work environments.” Moreover, it seems that local groups/teams have a different relationship

with the administrative centers. Instead of reporting on numbers, they are granted the possibility of arguing for the redefinition of goals, procedures, and strategies as they go on developing their cases. In addition to the supervision of central and local management, the work of groups is also subject to other control mechanisms: peer pressure from inside the group, and external pressure from partners and other actors involved (as they build positive expectations over inspectors' performance). These elements have already been identified in other studies as important sources of government workers' motivation even under adverse conditions (Tendler, 1997; Justice, 1986).

The second conclusion relates to the practices, routines, and strategies developed by inspectors under each model and the respective outcomes of their interventions. As the cases indicate, responsive and random inspections organized by the zoning system (geographic jurisdictions) employed non-uniform procedures (for firms in the same sector/condition) and usually failed to produce detailed investigations and legal evidence. Even though in some cases the pay-for-performance system yielded improved outcomes (such as in FGTS collection), the process of establishing quantifiable targets, measures to monitor its attainment, and rewards for those bureaucrats who meet the goals create a relevant problem: the definition of narrow and quantifiable performance targets in a state fragmented into several agencies reduces the scope of action and might push bureaucracies away from solving complex and interrelated problems.²⁰

Conversely, the organization of inspection work around groups and special projects eliminates some of the obstacles to the development of sector-wide operations and favors continued interactions between inspectors and relevant partners. Sector-wide operations demand diagnostic information about the underlying causes of non-compliance (i.e. it requires contextual understanding of violations) and allow for the customization of

enforcement actions to sector-specific social and productive dynamics. As articulated by a number of inspectors, they start moving away from thinking about how to catch more and more lawbreakers as they gain greater latitude to think about why firms break the law in the first place.

In addition, groups and their sector-wide orientation push inspectors towards facing more complex problems and towards practicing relational interdependence in open-ended processes. As the cases demonstrated, groups are more prone to seek collaboration within and across organizations, as they recognize their actions should not suffice in dealing with a complex problem effectively. Also, as indicated by the empirical material, these collaborations frequently lead to some sort of legal, managerial, or technological solution for compliance problems (such as the adaptation of the DR device in construction sites to eliminate electrocutions). These “conversations” (Piore, 2009; Lester and Piore, 2006) between inspectors and other government and non-government actors are the root cause of these innovations leading to effective problem-solving in sectors as diverse as health care, information technology, and construction. Therefore, in contrast to the “technical” specification of outputs and the mimicking of market performance incentives, the EG approach emphasizes “deliberative administration,” bringing in elements of dialogue, negotiation, agreements, and collaborations across different units of the administration and external partners as key for promoting creative solutions for complex collective problems (Fischer and Forester, 1993; Evans, 2002 and 2005; Brugué, 2004; Baccaro and Papadakis, 2005).

The third and final conclusion we can draw from the matrix adds a cautionary note to the benefits of organizing inspection around groups and special projects. Since the planning and execution of sector-wide operations, and the respective interactions within

and across organizations, take time to hit the ground, the work of groups and special projects becomes unresponsive to the more immediate demands of needed workers, as well as of policymakers and politicians. Even though in the medium-to-long term the work of groups is more likely to solve complex and relevant problems, in the short run situations experienced by workers other than the object of the groups' intervention remain unnoticed. In contrast, under the zoning system, inspectors are free to respond immediately to workers' complaints, even if the intervention is less likely to promote changes in business practices and affect the underlying causes of non-compliance. For public sector bureaucracies such as the labor inspectorate, responsiveness is an important attribute in term of building reputation and a good public image, as well as of harvesting political support. Therefore, the possibility of combining both models under the same service seems promising as a way to reconcile problem-solving with responsiveness, and reaching a desirable balance, as described by March (1991), between the organizational functions of *exploration* of new possibilities (experimentation / innovation) and *exploitation* of old certainties (efficiency / mass production).²¹

Conclusion

The comparative analysis developed in this study indicates that the variable “management model” (or the strategies adopted by management to control the discretion and performance of street-level officers) has important implications when it comes to explaining why regulatory inspectors perceive relational interdependence in the development of their work. The cases analyzed indicate that certain features of the management models and the ways they organize street-level regulatory work– such as predefined performance targets vs. open-ended processes and constant revision of goals,

performance measures, and inspection procedures; individual vs. team work; etc. – affects the extent to which inspectors see the relevance and possibilities for working collaboratively within and across organizations in the development of effective solutions for compliance problems. The empirical material also provides supportive evidence for the claim that improving bureaucratic performance is not only about defining the right incentive system but should primarily focus on: a) setting in motion processes for constant revisions of goals and their measures, and b) redefining the mechanisms and procedures to control work routines every time they become hostile to the achievement of desired goals; both of which necessarily require interactions with a wide array of potential partners. Therefore, a deeper understanding of how management practices evolve in regulatory bureaucracies and how street-level officers incorporate such practices in their routines should be an indispensable aspect of the quest for explaining regulatory behavior and outcomes.

References

- Baccaro, Lucio and Konstatinos Papadakis (2005). “The Downside of Deliberative Public Administration.” International Institute for Labour Studies. Working paper.
- Bardach, E. & Kagan, R. (1982). *Going by the Book: The Problem of Regulatory Unreasonableness*. Philadelphia: Temple University Press.
- Barzelay, Michael (2001). *The New Public Management: improving research and policy dialogue*. University of California Press. 238p.
- Baumgartner, M.F. (1991). “The Myth of Discretion”. In: Hawkins, K., Ed. (1992). *The Uses of Discretion*. Oxford, Oxford University Press.
- Bittner, Egon (1967). “The Police on Skid Row: a study of peace keeping.” *American Sociological Review*, 32(5):699-715.
- Bittner, Egon (1990). *Aspects of Police Work*. Northeastern University Press. Chapter 5 “Florence Nightingale in the Pursuit of Willie Sutton”

- Bouckaet, Geert and Walter Balk (1991). "Public Productivity Measurement: Diseases and cures." *Public Productivity & Management Review* 15(2): 229-235.
- Bresser Pereira, Luis Carlos, and Peter Spink (1999). *Reforming the State: Managerial Public Administration in Latin America*. Boulder: Lynne Rienner.
- Brown, Michael (1981). *Working the Streets: police discretion and the dilemmas of reform*. New York: Russel Sage Foundation. 338p.
- Brugué, Quim (2004). "Modernizar la administración desde la izquierda: burocracia, nueva gestión pública y administración deliberativa." *Revista del CLAD Reforma y Democracia*, 29(June).
- Bryner, Gary (1987). *Bureaucratic Discretion: law and policy in federal regulatory agencies*. Pergamon Press, 250pp.
- Calvert, Randall, Matthew McCubbins and Barry Weingast (1989). "A Theory of Political Control and Agency Discretion." *American Journal of Political Science* 33(3):588-611.
- Davis, Kenneth C. (1969). *Discretionary Justice*. Baton Rouge: Louisiana State University Press.
- Dorf, Michael and Charles Sabel (1998). "A Constitution of Democratic Experimentalism," *Columbia Law Review* 267 (1998).
- Dunleavy, P., and C. Hood 1994. "From Old Public Administration to New Public Management." *Public Money and Management* (July – Sept.): 9-16.
- Dunleavy, P., H. Margetts, et al. (2006). "New Public Management Is Dead--Long Live Digital-Era Governance." *Journal of Public Administration Research and Theory* 16(3): 467-494.
- Evans, Peter (2002). "Hybridity as an administrative strategy: combining bureaucratic capacity with market signals and deliberative democracy." Plenary Lecture at VII International Congress of CLAD on State Reform and Administrative Development. Lisbon, Portugal, October 11.
- Evans, Peter. (2005). "Harnessing the State: Rebalancing Strategies for Monitoring and Motivation." Pp. 26-47 in Matthew Lange and Dietrich Rueschemeyer, eds., *States and Development: Historical Antecedents of Stagnation and Advance*. London: Palgrave.
- Fischer, Frank and John Forester, Eds (1993). *The Argumentative Turn in Policy Analysis and Planning*. Duke University Press.
- Gibson, James and Gregory Caldeira, Lester Spence (2002). "The Role of Theory in Experimental Design: experiments without randomization," *Political Analysis* 10(4): 362-375.
- Gribbons, Barry & Herman, Joan (1997). True and quasi-experimental designs. *Practical Assessment, Research & Evaluation*, 5(14). Retrieved March 16, 2009 from <http://PAREonline.net/getvn.asp?v=5&n=14>.
- Handler, Joel (1986). *Conditions of Discretion: autonomy, community, and bureaucracy*. New York: Russell Sage Foundation. 327p.
- Hawkins, K., Ed. (1992). *The Uses of Discretion*. Oxford, Oxford University Press.

- Hood, C. and G. Peters (2004). "The Middle Aging of New Public Management: Into the Age of Paradox?" *Journal of Public Administration Research and Theory* 14(3): 267-282.
- Justice, Judith (1986). "The Invisible Health Worker: The Peon," and "Sources of Information." In: *Policies, Plans & People: Culture and Health Development in Nepal*. Berkeley, California; University of California Press. Pp. 101-106.
- Leonard, David K. (1977). *Reaching the Peasant Farmer: Organization Theory and Practice in Kenya*. Chicago and London: University of Chicago Press, 286pp.
- Lester, Richard K., and Michael J. Piore. (2006) *Innovation: The Missing Dimension*. MIT Press.
- Lipsky, Michael (1980). *Street Level Bureaucracy: Dilemmas of the Individual in Public Services*. New York: Russell Sage Foundation.
- Majone, G. and A. Wildavsky (1979). "Implementation as Evolution." In: Pressman, Jeffrey L. and Aaron Wildavsky (1984). *Implementation*. Berkeley: University of California Press.
- Maynard-Moody, Steven and Michael Musheno (2003). *Cops, Teachers, Counselors: stories from the front lines of public service*. Ann Arbor: The University of Michigan Press, 221pp.
- March, James (1991). "Exploration and exploitation in organizational learning" *Organization Science* 2(1):71-87.
- McCubbins, M. and T. Schwartz (1984). "Congressional Oversight Overlooked: police patrol versus fire alarms." *American Journal of Political Science* 28(1, Feb.): 165-179.
- McCubbins, M., R. Noll, and B. Weingast (1987). "Administrative Procedures as Instruments of Political Control." *Journal of Law, Economics, and Organization* 3(2, Fall):243-277.
- Miles, Matthew and A. Michael Huberman (1994). *Qualitative Data Analysis*. Sage Publications.
- Noonan, Kathleen G., Charles F. Sabel, and William H. Simon, "The Rule of Law in the Experimentalist Welfare State: Lessons from Child Welfare Reform," mimeo, Columbia Law School, 2007.
- Osborne, David and Ted Gaebler (1992). *Reinventing Government: how the entrepreneurial spirit is transforming the public sector*. Addison-Wesley Publ. Co. 427p.
- McDermott, Rose (2002). "Experimental Methodology in Political Science," *Political Analysis* 10(4): 325-342.
- Michael Piore (2009). SASE Annual Meeting 2008, San José, Costa Rica: Second thoughts: on economics, sociology, neoliberalism, Polanyi's double movement and intellectual vacuums. *Socio - Economic Review* 7(1):161-175.
- Piore, Michael and Andrew Schrank (2008). "Toward managed flexibility: The revival of labour inspection in the Latin world", *International Labor Review*, 147(1): 1–23.
- Piore, Michael y Schrank, Andrew, 2007. "Norms, regulations and labor standards in Central America", *Serie Estudios y Perspectivas*, CEPAL, Sede subregional en México, México, 64pp.

- Pires, Roberto. (2008). "Promoting Sustainable Compliance: Styles of Labour Inspection and Compliance Outcomes in Brazil". *International Labour Review*, 147(2-3): 199-229.
- Pollitt, Christopher (1995). "Justification by Works or by Faith? Evaluating the New Public Management." *Evaluation* 1(2):133-154.
- Sabel, Charles (2005). "Globalisation, New Public Services, And Local Democracy: What's the Connection?" In: *Local Governance and the Drivers of Growth*. Published by OECD December.
- Sabel, Charles (2004). "Beyond Principal-Agent Governance: Experimentalist Organizations, Learning and Accountability," In: Ewald Engelen & Monika Sie Dhian Ho (eds.), *De Staat van de Democratie. Democratie voorbij de Staat*. WRR Verkenning 3 Amsterdam: Amsterdam University Press, pp.173-195.
- Sabel, Charles F. (1995). "Learning by Monitoring: The Institutions of Economic Development," In: Neil Smelser and Richard Swedberg, eds., *Handbook of Economic Sociology*.
- Sabel, Charles and Jonathan Zeitlin (2008). "Learning from Difference: The New Architecture of Experimentalist Governance in the EU." *European Law Journal*, 14(3, May): 271–327.
- Sanyal, Bishwapryia (2005). "Planning as Anticipation of Resistance." *Planning Theory*, 4(3): 225-245.
- Silbey, Susan S. and Ruthanne Huising, Salo Vincour Coslovsky (2008). "The Sociological Citizen: Recognizing Relational Interdependence in Law and Organizations," *Annee Sociologique* (forthcoming).
- Silbey, Susan S. and Egon Bittner (1982). "The Availability of Law", *Law and Policy Quarterly*, 4(4):399-434.
- Tendler, Judith (1997). *Good Government in the Tropics*. Johns Hopkins Press.
- Trost, Jan (1986). "Statistically Non-Representative Stratified Sampling: a sampling technique for qualitative studies." *Qualitative Sociology* 9(1, spring): 54-57.
- Van Maanen, John (1973). "Observations on the Making of Policemen." *Human Organization* 32(4):407-418.
- Van Maanen, John (1978). "The Asshole." In Manning, Peter; and J. Van Maanen (eds). *Policing a view from the street*. Pp.221-38.
- Weber, Max (1946). *Essays in Sociology* (with H.H. Gerth, C. Wright Mills): Oxford University Press.
- Wilson, James Q. (1989). *Bureaucracy: What Government Agencies Do and Why They Do It*. New York: Basic Books.
- Wilson, James Q. (1968). *Varieties of Police Behavior: the management of law and order in eight communities*. Cambridge, Massachusetts: Harvard University Press.

Endnotes:

¹ A quasi-experiment involves naturally occurring instances of observable phenomena which approximate or share some of the properties of controlled scientific experiments (with the exception of random assignment of groups – to be discussed later). The quasi-experimental research design allows for the comparison of different groups (e.g. management models) and their potential effects on outcomes (e.g. performance of inspectors), minimizing threats to external validity. Since quasi-experiments are natural experiments, findings in one may be applied to other subjects and settings, allowing for some generalizations to be made about the population. Quasi-experiments are attempts to uncover a causal relationship (based on the differences across the groups examined), even though the researcher cannot control all the factors that might affect the outcome (McDermott, 2002; Gibson et al., 2002; Gribbons and Herman, 1997).

² According to Davis (1969), before the 1970s there were many studies around the theme of discretion, but very few (or none) approached it as the central object of inquiry. According to the author, traditionally, jurisprudence studies focused too much on the law; public administration studies denied the human/individual value-oriented component of organizations management; and administrative law focused the small percentage of actions that involved formal proceedings and judicial review.

³ In Weber's formulation (1946), bureaucracy was an ideal-typical kind of social organization based on the rationalization of the administration and the law, in contrast to patrimonial and charismatic forms of government. Bureaucratic organizations – characterized by meritocratic recruitment (competitive exams and promotion by merit) and long-term rewarding career paths – perform their tasks according to predictable and impersonal rules.

⁴ Yet another strand of literature on “controls” on bureaucratic discretion, characterized by a sociological perspective, emphasizes forms for managing discretion other than formal rules/law or organizational structure, including: organizational culture, context, social norms, groups, etc. (see, for example, Hawkins, 1992; and Baumgartner, 1992).

⁵ Reform of public schools and rolling rule regimes (meta-regulation) in the regulation of food safety in the US (Sabel, 2004); reform of state child protective services systems in Alabama and Utah (Noonam, Sabel, and Simon, 2007); welfare services in the Netherlands, Denmark, and Ireland (Sabel, 2005); systems of social protection, occupational health and safety, drug and food safety, telecommunications, electricity, maritime safety, and financial services in the European Union (Sabel and Zeitlin, 2008).

⁶ The study involves the systematic observation of distinct phenomena (management models) occurring under approximately stable and controlled conditions (organizational setting). However, even though many relevant variables are held constant (as it will be described below), the current research design does not control for the individuals selected to participate in each group. Differently than an experiment in which groups/cases are randomly assigned by researchers, in a quasi-experiment the groups to be compared are naturally-occurring or pre-existing. Unlike the true experiment then, groups in a quasi-experiment are not probabilistically equivalent; rather the assumption is that such groups will differ from the outset on some essential quality: e.g. routines of work, and management procedures and structures (Gibson et al., 2002). Therefore, rather than focusing on the characteristics of individuals, this study examines whether different management models are more or less likely to influence the behavior of bureaucrats at the street-level.

⁷ The number of inspectors in Brazil is only half that recommended by the ILO and lower (per 100,000 workers rate) than in some of its Latin American neighbors such as Argentina, Chile and Uruguay (Piore and Schrank, 2007). However, even constrained by these resource limitations, Brazil's labor inspection service has received international recognition for its outstanding and innovative programs to eliminate forced labor and child labor.

⁸ The interviews added up to a total of 114 averaging two hours long. I conducted approximately half (49) of the interviewees with labor inspectors in the three states and at the central level in Brasilia. I complemented and cross-checked (triangulation) the stories and data collected from these labor inspectors by interviewing another 65 actors who were involved in specific cases, including firm owners, managers, workers and representatives of business associations, trade unions and government agencies (e.g. National Health and Safety Institute, Attorney General's Office, the armed forces, development banks).

⁹ It is not the goal or focus of the present study to explain how these two different methods for organizing inspection work emerged within the same organization. This is the object of a forthcoming paper, in which I explore how historical internal cleavages between factions of inspectors with different interpretations of the role of labor inspection (revenue-collection vs. social development) shaped the development of competing

models and their respective organizational structure (inspections practices, monitoring systems, etc.). As a result of the internal struggle, fueled or moderated by central management and external actors (e.g. ILO, Ministry of Planning, unions, etc.), it is possible to observe a constantly renegotiated balance between the forces of fragmentation (coexistence of two models) or convergence (the supremacy of one model over another) in the last 15 years.

¹⁰ The selection of cases for comparison under this study employed a technique to select the best possible sample when we do small sample qualitative studies: statistically non-representative stratified sampling (Trost, 1986; Miles and Huberman, 1994). The goal of the sampling strategy is not to build a representative sample in the statistical sense, but to maximize variation along the independent variables. Differently than the samples of quantitative studies that tend to be random (and yield few variations when the sample is small), the sample for this study is purposive and stratified; that is, it identifies subgroups and facilitates comparisons across cases to explore the links between the dependent and the independent variables.

¹¹ In Brazil, all formal employment relationships must be recorded by employers on the employees work permit (*carteira de trabalho*). This permit entitles the worker to several wage and non-wage benefits paid for by the employer, such as retirement benefits, unemployment insurance, and severance payments.

¹² FGTS is the main source of funding for housing, sanitation, and infrastructure projects, as well as social policies, in the whole country. And, in public accounting terms, this fund plays a major role in balancing federal debts vs. revenues.

¹³ In 2007, the project is scaled up and operational groups become mandatory for all state offices.

¹⁴ The application of standardized procedures provides the same treatment for firms in the same sector and strengthens the consistency of the regulatory effort. Since the creation of ECOFREM, no single fine has been overruled in Pernambuco courts (consistent procedure and credible evidence). Moreover, the investigation strategies and practices are periodically reassessed by inspectors together with MPT prosecutors, who strengthen the coercive power of the group by filing lawsuits against firms and cooperatives that fail to comply with consent decrees.

¹⁵ After the success of ECOFREM in dealing with these cases, in 2006, DLI created a national operation to investigate similar frauds in banks in seven different states, drawing from the experience of Pernambuco inspectors.

¹⁶ The same rate for the United States and Japan are respectively, 19.5% and 38.7%. Brazil ranks seven in the world, in numbers of fatal occupational accidents (ILO).

¹⁷ First, they meet for an internal, closed meeting and later for a seminar-type of meeting open to the public.

¹⁸ Another similar episode took place in the LTC in relation to adaptations in passenger and load elevators in construction sites in order to minimize falls and other accidents involving the equipment.

¹⁹ Studies on doctors in the UK and US revealed that these professionals felt more pressured, less motivated when monitored in terms of quantitative performance indicators, and also developed the practice of masking numbers when elaborating reports (E.McDonald and L.Miller oral communication entitled “Tensions between Managerialism and Autonomy” at the 2008 Annual Meeting of the Society for the Advancement of Socio-Economics - SASE, San Jose, Costa Rica, July 23.)

²⁰ Critical reactions to NPM reforms come not only from scholars but also from public sector workers and professionals themselves. Current criticism on NPM reforms (and its disaggregation of organizations – core vs. other functions – and narrowing of programs and tasks to the extent that they can be written into a contract) recognizes its inability to deal with complex, interrelated, or cross-cutting problems, such as preventative health, school reforms, child care services, social assistance programs, all of which require the coordination of local knowledge with a range of different services provided by different government organizations.

²¹ Of course, then the question becomes how much resource to allocate for each model within the same service. In the Brazilian experience, we currently observe a gradual shift away from the prevalence of the pay-for-performance system and towards a greater emphasis on the organization of inspection work based on groups and special projects. Responsive and geographically bounded inspections should still remain, but as a residual category, only enough to cover for emergency complaints received from workers in vulnerable situations (e.g. non-payment of wages, eminent risk of death of accident, etc.)